

IN THE
Court of Appeals, District of Columbia

APRIL TERM, 1898.

No. 792.

SPECIAL CALENDAR, No. 5.

ELLIS H. ROBERTS, TREASURER OF THE UNITED STATES,
APPELLANT,

vs.

UNITED STATES OF AMERICA EX REL. MARIE A.
VALENTINE, APPELLEE.

This is an appeal from a judgment of the supreme court of the District of Columbia sustaining a demurrer of the appellee to the answer of the appellant to a petition for the writ of mandamus, and granting the relief prayed for in the petition of the appellee, and ordering the writ of mandamus to issue to the appellant, Ellis H. Roberts, Treasurer of the United States, commanding him to pay to the relator, Marie A. Valentine, pursuant to the act of Congress approved August 13, 1894, the interest on the Board of Audit

certificates numbered 19249, for \$19,616.25, and 8879, for \$909.40, at the rate of 2.35 per centum per annum, from the date of the said certificates, to wit, August 1, 1874, up to the date of the approval of the act of Congress providing for their redemption, to wit, June 16, 1880, together with the costs of this case.

The petition for the writ of mandamus was filed by the relator, Marie A. Valentine, and therein she alleges that one Charles E. Evans (an assignor of your petitioner), during the years 1871 to 1874, inclusive, was carrying on the business of a contractor, laying concrete and brick pavements on sidewalks and on streets and making other improvements on streets and avenues, in the city of Washington, and that he carried on said business under the name of "Evans Concrete Company;" that the work done and materials furnished by said Evans was under contracts with the duly authorized officials of the District of Columbia, being with the Board of Public Works of said District, and that the amount due him was a large sum, and much of it remained unpaid on the first day of August, 1874.

On the 1st day of August, 1874, certain claims under said contract had been duly submitted for examination and audit in pursuance of the act of Congress entitled "An act for the government of the District of Columbia and for other purposes," approved June 20, 1874; that said accounts were approved by the Board of Audit, and after having duly audited the said claims, they were signed and issued for delivery the two certificates mentioned aforesaid, said certificates being set out in the record, on pages 2 and 3 thereof; that at the time the said certificates were issued claim had been made by the Commissioners of the District of Columbia (the successors of the Board of Public Works) that the said Charles E. Evans was liable for the expense of repairs which were needed on certain portions of the streets laid by him. The petition further alleges that afterwards it appeared that these claims were

not well founded, but the said Board of Audit of the District of Columbia, instead of delivering the said certificates to the said Evans, withheld them and delivered them to the Commissioners of the District of Columbia, and that the said Commissioners detained and withheld the certificates from the said Evans, claiming them as collateral security for the payment of their unauthorized claims for repairs to said pavements; that said certificates remained until the 9th day of June, 1880, deposited in a tin box in the office of the Treasurer of the United States, the key of the said box being in the possession of the said Treasurer, who held it and the contents of said box subject to the control of the Commissioners of the District of Columbia. The petition further alleges that prior to the 1st day of January, 1880, the said certificates had been assigned and transferred to Thomas J. Fisher, a resident of the said District of Columbia, and prior to the 13th day of January, 1881, the Treasurer of the United States had been duly requested to convert the same into 3.65 bonds, in pursuance of the act of Congress dated January 16, 1880, and at divers times, both before and after said 13th day of January, 1881, the said Thomas J. Fisher and his assignees demanded and requested that said certificates be redeemed by issuing in the place thereof 3.65 bonds, as approved in section 9 of the act of June 16, 1880; that the said Treasurer refused each and every time the demand to issue bonds for the said certificates, on the ground solely, as your petitioner is informed and believes, that the Commissioners of the District of Columbia made the claim aforesaid; that thereafter, in December, 1880, the said Thomas J. Fisher, in pursuance of sections 1 and 2 of the act of Congress passed January 16, 1880, chapter 243, commenced an action in the Court of Claims of the United States against the District of Columbia to recover, in addition to a large number of other claims, the amount certified by said certificates of the Board of Audit mentioned aforesaid; that during the December term 1889-'90 of said court the executors of the said Thomas J.

Fisher were, after a suggestion of the death of the said Fisher, made parties to the record, and on the 19th day of June, 1890, the petitioner alleges upon information and belief that an agreement was entered into by the parties interested to dispose of said action by the delivery of the said certificates to the executors of Fisher, and that on the 9th day of June, 1890, the Commissioners of the District of Columbia obtained from the said Treasurer of the United States and delivered to the plaintiffs' attorney in said action the said two certificates mentioned aforesaid, and that the said attorney for the plaintiffs took said certificates into his possession, and that thereupon the plaintiffs' attorney presented the said certificates to the Treasurer of the United States and requested him to issue for the said certificates 3.65 bonds; that the Treasurer of the United States *refused and declined to redeem the said certificates* or to issue bonds for the payment thereof or in any way to pay the same unless a judgment of the said Court of Claims, in which the said action upon the said certificates had been brought, should be first entered for his protection; that thereupon a judgment upon the said certificates was entered in the aforesaid action in favor of the defendant.

The petition goes on then to state how the judgments were paid, and it alleges that, prior to the rendition of the said judgment by the said Court of Claims, all claims on the part of the plaintiffs, other than the two certificates, were eliminated from the case, and that judgment was entered in the Court of Claims for the amounts of the two certificates, the pleadings having been amended for that purpose, and that the judgments after ninety days were duly paid by the Treasurer of the United States, with interest at the rate of 3.65 per cent.

Then the petition alleges that the executors of the said Fisher, prior to the payment of the said amount, in pursuance of an order of the supreme court of the District of Columbia, assigned and transferred to Marcus W. Robinson

all of the several claims, and that the said Marcus W. Robinson afterwards assigned the claims to your petitioner, the assignments being marked Exhibits 1 and 2 and set out on pages 8, 9, and 10 of the Record.

Then the petition sets out the act of August 13, 1894, and says that the petitioner has applied and presented her claim to the Treasurer of the United States for such residue of the interest upon the amounts of said Board of Audit certificates and requested payment thereof and *laid all of the facts* before the Treasurer, but that the said Treasurer refused to make the payment on the ground that the said Board of Audit certificates *had not been redeemed by him or his predecessor*, and a copy of said refusal is set out on page 10 of the Record. The petition then prays for a writ of mandamus to compel the Treasurer to pay the interest under the act of August 13, 1894.

To this petition the defendant, Ellis H. Roberts, filed a return, in which he stated that the Board of Audit certificates, so called, mentioned in said petition *were not redeemed by him or any person holding the office of the Treasurer of the United States at any time*, and that the only moneys paid by any Treasurer of the United States on account of any of the matters or things in said petition mentioned as having relation to the said certificates, or either of them, were paid *upon such judgments of the Court of Claims of the United States as appears by the transcript from the records of the Treasury Department of the said United States, hereto annexed and made part hereof*, and that the defendant has no official knowledge or any official record in his office showing or tending to show upon what claim or claims either of said judgments are based. Then, as part of said return, are set out the judgments of the Court of Claims and the receipts of the attorney for the payment thereof, which said receipts show that *both of said judgments were paid before there was any assignment made by the executors of Thomas J. Fisher to Marcus W. Robinson.*

To this return the relator filed a demurrer, which alleged that the matters contained in the answer of the defendant, Ellis H. Roberts, were not sufficient in law to bar or preclude the said relator from having or maintaining her aforesaid petition for the writ of mandamus against him. The cause was then heard upon this demurrer, and the court made an order granting the writ of mandamus, which said order is fully set out on pages 14 and 15 of the said record. From this the defendant Roberts in open court noted an appeal to the Court of Appeals.

ASSIGNMENT OF ERRORS.

1. The court erred in sustaining the demurrer.
2. The court erred in not dismissing the petition of the relator, as the same shows on its face that the relator is not entitled to the relief prayed for.
3. The court erred in holding that the relator was an assignor of the said Board of Audit certificates mentioned in the petition.
4. The court erred in holding that said certificates were redeemed by the Treasurer of the United States.
5. The court erred in not holding the return a sufficient answer to the matters set up in the petition.
6. The court erred in holding that the case presented by the petition could be corrected by a mandamus.

ARGUMENT.

Before taking up the case on its merits, it becomes our duty to consider exactly how the issues in this case were heard and determined in the court below.

In the first place, the court considered the facts in the case as admitted by the demurrer, and considered merely whether the records showed that the relator was entitled to the relief prayed for, without even noticing the issue of fact raised by the answer.

This on the part of the court was error, as the only facts the demurrer admitted were the facts set out in the answer; which said facts are an absolute denial on the part of the Treasurer of the United States of the facts relied on in the petition, he saying that *neither he nor any person holding the office of Treasurer of the United States at any time had ever redeemed the said certificates, and that he had no official knowledge, nor was there any official record in his office showing or tending to show that the said judgments paid by the Treasurer of the United States were paid on account of the said certificates*; so that on the hearing of the demurrer to the return the court in its decision virtually said that as matter of law the petitioner is entitled to the relief prayed for, notwithstanding the fact that the respondent says in his answer that the said certificates were never redeemed by him; but as the demurrer thus standing in the record goes to the whole of it, so that it can be considered as a demurrer to the petition, we will consider how far the record shows that the relator is entitled to the relief sought, not in any manner thereby waiving our right to say that if this court should find the petition proper, still the court below erred in not overruling the demurrer to the return, as the return shows a traverse of material facts contained in the petition.

First, let us consider what title, if any, the relator has to bring this suit.

The rule as to the interest of a relator is that whenever the remedy by mandamus is resorted to for the purpose of enforcing a private right, the person interested in having the writ enforced must be the relator; the relator is considered the real party, and his right to the relief must clearly appear. And now, what interest has the relator in these certificates? Is she the owner, holder, or assignee of said certificates? According to the facts set out in the petition, she never was the owner of the certificates, nor has she anywhere alleged that she is the holder of them; the record certainly fails to show who is the holder. Now, if the petitioner has any right at all it must be as assignee of some former holder. The petition shows that in 1890 these certificates were delivered to Fisher, but whether they are still in the possession of his executors at the present time the petition does not show; but the petition does show that Fisher was the assignee of them at the time that these judgments were paid, and that at that time there was no assignment on the part of Fisher's executors to any person.

Evidently the act of August 13, 1894, when it uses the words "the assignees" means assignees at the time of the redemption, and not any person who might acquire a general assignment of claims afterwards. Now, the claim of the relator is that she is an assignee of the executors of Fisher by an assignment of Robinson, who was an assignee of Fisher's claims, as set out in the general assignment; but on the record Robinson never was assignee of these certificates, for the certificates, according to the petition, were paid by the Treasurer of the United States by payments of the judgments mentioned aforesaid on the 12th day of September, 1890, and the assignment made by the executors of Fisher was made some time after the 15th day of September, 1890, as the assignment itself recites "that the same is made in pursuance of an order of the supreme court of the District of Colum-

bia, sitting at a special term for the transaction of probate business, on the 15th day of September, 1890," and nowhere in the assignment are these certificates mentioned. That being so, our contention is that the petitioner is not an assignee within the meaning of the act and really has no interest whatsoever in the certificates mentioned aforesaid.

Second. The second contention is that the certificates set out in the petition were never redeemed by the Treasurer of the United States and therefore are not certificates within the meaning of the act. The act itself applies only to such certificates as were redeemed by the Treasurer under the act approved June 16, 1880, and the petition itself shows that these certificates never were redeemed, *and are not now in the possession of the Treasurer of the United States*, and the answer of the respondent denies that they were ever redeemed by him or by any person whatsoever. The statements made in the petition and answer conclusively show that the certificates were never redeemed, but the petitioner claims that redeem means merely payment, and that they were paid, so that such payment is equivalent to redemption; but the acts of Congress on the subject of these certificates first provided for redemption and then for payment, but when the judgments set out as part of the respondent's answer were paid the Treasurer of the United States was prohibited from paying these certificates by the act of Congress of July 5, 1884 (23d Stats., 131), said act reading as follows:

"That no payment shall be made of any certificates issued by the late Board of Audit of the District of Columbia under authority of the act approved June 28, 1874, that should not be presented for payment within one year from the date of the approval of act."

There is no allegation in the petition that these certificates were presented within one year after the passage of the act. Indeed, if there were such allegation it would be of no value, as both petition and answer show that the certificates

were not paid by the Treasurer of the United States, and that the only money ever recovered by the assignees of said certificates, the executors of Fisher, were received on the judgments of the Court of Claims, which were fully paid and settled on September 12, 1890.

Thus we see that these certificates were never redeemed or paid; but the court below seemed to consider that they should have been redeemed or paid, and that in considering this petition for the writ of mandamus it should so consider them, as redeemed, because in his opinion a mandamus could have been issued against the Treasurer of the United States to compel him to have so redeemed the certificates. The court overlooked the fact that these certificates were never delivered to the persons claiming them until after the passage of the act prohibiting their redemption and payment, but that they were held as collateral security for the expense of repairs which the Commissioners of the District of Columbia held were due by the said Evans, and certainly no mandamus could have been issued to compel the delivery of the certificates under such circumstances, and at this late day the court cannot attempt to rectify what it supposes to have been an apparent oversight on the part of the holders of the certificates.

Who has these certificates at the present time the record does not show, but the record does show that the relator has not them or did not deliver them to the Treasurer when she demanded the interest that she claims, and the record also shows that they are not in the possession of the said Treasurer of the United States; and the record further shows that there is no record of their payment or redemption in this cause, nor, to the knowledge of the Treasurer of the United States, does any record exist; so that we contend that there is nothing in this record to show that these certificates ever were redeemed within the meaning of the act of August 13, 1894.

Third. And, such being the state of the record as above set out, the supreme court of the District of Columbia was asked to issue the writ of mandamus against the Treasurer of the United States to compel him to decide all of the above points in favor of the petitioner, and then to compel the payment to the petitioner of a certain sum of money as interest due under the act of August 13, 1894; so that we come to consider the last question, namely, Can the supreme court of the District of Columbia compel the Treasurer of the United States to decide in favor of the petitioner all of the points in this cause, and to issue a writ of mandamus to him to give petitioner the relief sought?

The contention of the petitioner is that the act on the part of the Treasurer is merely a ministerial act; but we insist that we have only to make such a contention to show its absurdity. Is it a ministerial act for the Treasurer of the United States to decide who is the assignee of these supposed certificates, Fisher's executors or the petitioner? In order to decide this point the Treasurer has to determine the effect of the several assignments to the petitioner and what interest, if any, passed under the assignments, and whether or not the word "assignee" in the act means assignee at the time of redemption or an assignee made after the certificates were redeemed; and, further, if he decides that assignee applies to the assignee at the time the interest is demanded of him, he has to also inquire if there is a present holder, and what rights, if any, the holder has against the assignee in this case; he has to decide whether any interest passed to Robinson in these certificates, the judgment in the Court of Claims having been fully satisfied and paid before the assignment, and there appearing nothing of record to show that these certificates were ever delivered to Robinson.

He must go further; he must next decide that "redeemed," as used in the act, means more than an actual redemption, and he must in this case say that the payment of the judgments in the Court of Claims, although there is nothing on

their face to show that there is a payment of the certificates, was a payment and redemption of the certificates within the meaning of the act, and that he, the Treasurer, has *no discretion* in deciding the above questions, but he must decide them all *in favor of the relator*; he would be compelled to decide that the payment of the judgments was a payment and redemption of the certificates, when he, by the act of July 5, 1884, was prohibited from paying any such certificates.

Now the relator asks the defendant in this case to decide all of these questions in her favor, and to decide them even contrary to law, and still she maintains that she has a standing in court by writ of mandamus because she has presented such a case as calls on the Treasurer of the United States merely to do a ministerial act, and if he refuses to do this act the relator says that the court could by its writ compel him to perform it. The appellant contends that the case as presented in the petition is not one that comes within the definition of a ministerial act, and that therefore the writ of mandamus will not lie.

In the case of *Mississippi vs. Johnson*, 4 Wallace, 475, the court defined a ministerial duty in this clear language:

"A ministerial duty, a performance of which may in proper cases be required of the head of a department by judicial process, is one in respect of which nothing is left to discretion; it is a simple, distinct duty arising under circumstances admitted or approved to exist and imposed by law."

It is not necessary for us here to consider this question in all its phases, nor is it necessary to make our case by argument merely. The matter has been so fully and ably adjudicated by the Supreme Court of the United States that we need only cite the authorities that we rely on. Two leading cases show authoritatively when the court may and when it may not issue a writ of mandamus against an executive officer of the Government, and they are *Kendall vs.*

The United States, 12 Peters, 524, and *Decatur vs. Paulding*, 14 Peters, 497. In the first case the act required by the law to be done by the Postmaster General was simply to accredit the relators with the full amount of the award of the solicitor. The Supreme Court of the United States held that this act was a precise, definite act, purely ministerial, and about which the Postmaster General had no discretion whatever. The law upon its face showed the existence of the accounts between the relator and the Post-office Department. No money was required to be paid, and none could have been drawn out of the Treasury without further legislation, if the credit desired to be made in that case overbalanced the debit standing against the relators. The court further said :

"There is no room for the exercise of any discretion, official or otherwise. All that is shut out by the direct and positive language of the law, and the act required to be done is in every just sense a mere ministerial act."

In the second case above cited Mrs. Decatur, who was pensioned under a general pension act, applied for a pension under an act passed for her benefit. Paulding, Secretary of the Navy, decided that she could not be pensioned under both acts, as she claimed she had a right to be, and called upon her to choose if she would be pensioned under the general act or the one passed for her special benefit. She applied for a writ of mandamus to compel the Secretary to grant her a pension under the act passed for her special benefit, which was refused. The court said :

"The duty required by the resolution is to be performed by him (the Secretary of the Navy) as the head of one of the executive departments of the Government, in the ordinary discharge of his official duties. In general, such duties, whether imposed by act of Congress or by resolution, are not mere ministerial duties. The head of an executive department of the Government, in the administration of the various and important concerns of his office, is continually

required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress under which he is from time to time required to act. If he doubts, he has a right to call on the Attorney General to assist him with his counsel, and it would be difficult to imagine why a legal adviser was provided by law for the heads of departments, as well as for the President, unless their duties were regarded as executive, in which judgment and discretion were to be exercised.

"If a suit should come before this court which involved the construction of any of these laws, the court certainly would not be bound to adopt the construction given by the head of a department; and if they supposed his decision to be wrong, they would, of course, so pronounce their judgment; but their judgment upon a construction of a law must be given in a case in which they have jurisdiction and in which it is their duty to interpret the act of Congress in order to ascertain the rights of the parties in the cause before them. The court could not entertain an appeal from the decision of one of the Secretaries, nor revise his judgment in any case where the law authorized him to exercise discretion or judgment; nor can it by mandamus act directly upon the officer and guide and control his judgment or discretion in the matters committed to his care in the ordinary discharge of his official duties."

The above cases illustrate these principles and show the difference between executive duties and ministerial acts.

And in this case here before this court it is necessary for the Treasurer of the United States to decide something, and if he is uncertain as to his decision, he has the right to inquire of and have the advice of the law officers of the Government, and, that being so, the duty imposed upon him is not merely a ministerial act.

The case relied upon by the court below in deciding this case was that of *Dunlap vs. Black*, 128 United States, 40. The petition for a writ of mandamus to direct the Commissioner of Pensions Black to increase his pension was refused by the supreme court of the District of Columbia, and the relator appealed to the Supreme Court of the United States.

After discussing the two cases before referred to, the court said :

"The principle of law deducible from these two cases is not difficult to enounce. The court will not interfere by mandamus with the executive officers of the Government in the exercise of their ordinary official duties, *even where those duties require an interpretation of the law, the court having no appellate power for that purpose* ; but when they refuse to act in a case at all, or when, by special statute or otherwise, a mere ministerial duty is imposed upon them—that is, a service which they are bound to perform without further question—then, if they refuse, a mandamus may be issued to compel them.

"Judged by this rule, the present case presents no difficulty. The Commissioner of Pensions did not refuse to act or decide. He did act and decide. He adopted an interpretation of the law adverse to the relator, and his decision was confirmed by the Secretary of the Interior, as evidenced by his signature to the certificate. Whether, if the law were properly before us for consideration, we should be of the same opinion or of a different opinion is of no consequence in the decision of this case. We have no appellate power over the Commissioner, and no right to review his decision ; that decision and his action taken thereon were made and done in the exercise of his official functions. They were by no means merely ministerial acts."

The part of the decision that is relied upon by the appellee in this case and by the court below to sustain the mandamus reads as follows :

"But when they refuse to act in a case at all, or when by special statute or otherwise a mere ministerial duty is imposed upon them that is a service which they are bound to perform without further question, then if they refuse a mandamus may be issued to compel them."

The court below said that this was a special statute, imposing a specific duty, and that therefore the duty or the act imposed was merely a ministerial duty ; but the Supreme Court uses the words "when by special statute or otherwise

a mere ministerial duty is imposed upon them ;" so that we are driven back to the one question and the only question, What is a ministerial duty? and the answer is that wherever the party can do an act without exercising any discretion, without interpreting any law, but merely has to perform an act which he is bound to perform without further question, as the crediting of an account or the delivery of a patent, then the duty is ministerial; but when there is any judgment or discretion involved in the carrying out or performing of the act, the duty is not ministerial.

Another contention made was that the act in this case is so certain that it needs no construction. If you applied the act merely to those certificates that have been redeemed and are in possession of the Treasurer of the United States, and hold the person who was the owner, holder, or assignor at the time of the redemption is the only person entitled to receive payment, that might be so; but the relator in this case by her own petition makes the act indefinite. But even if the act were plain, still the Treasurer has a right to interpret it.

In the case of *Decatur vs. Paulding*, before referred to, the Supreme Court say :

"The contention of the relator is that the interpretation we passed upon the act is too obviously correct to admit of dispute, and that this court has so decided; but it does not follow because the decision of the comptroller and auditor may have been erroneous that the assertion of the relator to that effect raises a cognizable controversy as to their authority to proceed at all. What the relator sought *was an order coercing these officers to proceed in a particular way*, and this order the supreme court of the District of Columbia declined to grant. If we were to reverse the judgment on the ground urged, it would not be for want of error in the auditor to audit the account and in the comptroller to refuse to pass upon it, or because these officers had disallowed what they ought to have allowed, and erroneously construed what needed no construction. This would not in any degree involve the validity of their authority."

So that our contention is that the relator is not entitled to the relief that she seeks, because she has not shown a case that requires the performance of a merely ministerial duty on the part of the Treasurer of the United States, but that she has shown a case wherein it was necessary for the Treasurer of the United States to decide whether the certificates mentioned were redeemed, or whether they were ever entitled to redemption, or whether they had ever been paid, or whether the payment amounted to a redemption, or whether relator was an assignee within the meaning of the act, and we hold that the Treasurer of the United States having decided these matters adverse to the petitioner, the petitioner cannot come here and ask this court to interfere by the writ of mandamus; so that therefore we respectfully submit to the court that in this case the Treasurer of the United States was fully warranted in deciding the case in the manner in which he did, and, further, that the supreme court of the District of Columbia had no power over him to review his decision, and we therefore ask that the judgment of the court below be reversed and the cause be remanded, with direction to dismiss the petition for the writ of mandamus.

HENRY E. DAVIS,

U. S. Attorney in and for the District of Columbia,

D. W. BAKER,

Ass't U. S. Attorney for D. C.,

Attorneys for Appellant.

CLERK SUPREME COURT U.
FILED

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JAMES H. MCKENNEY,

CLERK

No. 86.

Brief of Atty. Gen. (Richardson) for Petitioner

Filed Nov. 6, 1899.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

ELIJAH H. ROBERTS, TREASURER OF THE
United States, petitioner,

v.

THE UNITED STATES EX REL. MARIE A.
Valentine.

No. 86.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DIS-
TRICT OF COLUMBIA.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

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| ELLIS H. ROBERTS, TREASURER OF THE United States, petitioner, v. THE UNITED STATES EX REL. MARIE A. Valentine. | } | No. 86. |
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*ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DIS-
TRICT OF COLUMBIA.*

STATEMENT.

The facts in this case are stated in the petition for mandamus:

The petition for the writ of mandamus was filed by the relator, Marie A. Valentine, and therein she alleges that one Charles E. Evans (as assignor of your petition), during the years 1871 to 1874, inclusive, was carrying on the business of a contractor, laying concrete and brick pavements on sidewalks and streets, and making other improvements on streets and avenues in the city of Washington, and that he carried on said business under the

name of "Evans Concrete Company;" that the work done and materials furnished by said Evans were under contracts with the duly authorized officials of the District of Columbia, being with the board of public works of said District, and that the amount due him was a large sum, and much of it remained unpaid on the 1st day of August, 1874.

On the 1st day of August, 1874, certain claims under said contract had been duly submitted for examination and audit in pursuance of the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874; that said accounts were approved by the board of audit, and after having duly audited the said claims, they were signed and issued for delivery. The two certificates mentioned aforesaid, said certificates being set out in record on pages 2 and 3 thereof; that at the time the said certificates were issued claim had been made by the Commissioners of the District of Columbia (the successors of the board of public works) that the said Charles E. Evans was liable for the expense of repairs which were needed on certain portions of the streets laid by him. The petition further alleges that afterwards it appeared that these claims were not well founded, but the said board of audit of the District of Columbia, instead of delivering the said certificates to the said Evans, withheld them and delivered them to the Commissioners of the District of Columbia, and that the said Commissioners detained and withheld the certificates from the said Evans, claiming them as collateral security for the payment of their unauthorized

claims for repairs to said pavements; that said certificates remained until the 9th day of June, 1880, deposited in a tin box in the office of the Treasurer of the United States, the key of the said box being in the possession of the said Treasurer, who held it and the contents of said box subject to the control of the Commissioners of the District of Columbia. The petition further alleges that prior to the 1st day of January, 1880, the said certificates had been assigned and transferred to Thomas J. Fisher, a resident of the said District of Columbia, and prior to the 13th day of January, 1881, the Treasurer of the United States had been duly requested to convert the same into 3.65 bonds, in pursuance of the act of Congress dated January 16, 1880, and at divers times, both before and after said 13th day of January, 1881, the said Thomas J. Fisher and his assignees demanded and requested that said certificates be redeemed by issuing in the place thereof 3.65 bonds, as approved in section 9 of the act of June 16, 1880; that the said Treasurer refused each and every time the demand to issue bonds for the said certificates, on the ground solely, as your petitioner is informed and believes, that the Commissioners of the District of Columbia made the claim aforesaid; that thereafter, in December, 1880, the said Thomas J. Fisher, in pursuance of sections 1 and 2 of the act of Congress passed January 16, 1880, chapter 243, commenced an action in the Court of Claims of the United States against the District of Columbia to recover, in addition to a large number of other claims, the amount certified by said certificates of the board of audit mentioned aforesaid; that during the December

term 1889-90 of said court the executors of the said Thomas J. Fisher were, after a suggestion of the death of the said Fisher, made parties to the record, and on the 19th day of June, 1890, the petitioner alleges upon information and belief that an agreement was entered into by the parties interested to dispose of said action by the delivery of the said certificates to the executors of Fisher, and that on the 9th day of June, 1890, the Commissioners of the District of Columbia obtained from the said Treasurer of the United States and delivered to the plaintiffs' attorney in said action the said two certificates mentioned aforesaid, and that the same attorney for the plaintiffs took said certificates into his possession, and that thereupon the plaintiffs' attorney presented the said certificates to the Treasurer of the United States and requested him to issue for the said certificates 3.65 bonds; that the Treasurer of the United States *refused and declined to redeem the said certificates* or to issue bonds for the payment thereof or in any way to pay the same unless a judgment of the said Court of Claims, in which the said action upon the said certificates had been brought, should be first entered for his protection; that thereupon a judgment upon the said certificates was entered in the aforesaid action in favor of the defendant.

The petition goes on then to state how the judgments were paid, and it alleges that, prior to the rendition of the said judgment by the said Court of Claims, all claims on the part of the plaintiffs, other than the two certificates, were eliminated from the case, and that judgment was entered in the Court of Claims for the amounts of the two certificates, the pleadings having been amended

for that purpose, and that the judgments, after ninety days, were duly paid by the Treasurer of the United States, with interest at the rate of 3.65 per cent.

Then the petition alleges that the executors of the said Fisher, prior to the payment of the said amount, in pursuance of an order of the supreme court of the District of Columbia, assigned and transferred to Marcus W. Robinson all of the several claims, and that the said Marcus W. Robinson afterwards assigned the claims to your petitioner, the assignments being marked Exhibits 1 and 2 and set out on pages 8, 9, and 10 of the record.

Then the petition sets out the act of August 13, 1894, and says that the petitioner has applied and presented her claim to the Treasurer of the United States for such residue of the interest upon the amounts of said board of audit certificates and requested payment thereof, and *laid all of the facts* before the Treasurer, but that the said Treasurer refused to make the payment on the ground that the said board of audit certificates *had not been redeemed by him or his predecessor*, and a copy of said refusal is set out on page 10 of the record. The petition then prays for a writ of mandamus to compel the Treasurer to pay the interest under the act of August 13, 1894.

To this petition the defendant, Ellis H. Roberts, filed a return, in which he stated that the board of audit certificates, so called, mentioned in said petition *were not redeemed by him or any person holding the office of Treasurer of the United States at any time*, and that the only moneys paid by any Treasurer of the United States an account of any of the matters or things in said petition mentioned as having relation to the said certificates, or either of them,

were paid upon such judgments of the Court of Claims of the United States, as appears by the transcript from the records of the Treasury Department of the United States, hereto annexed and made part hereof, and that the defendant has no official knowledge or any official record in his office showing or tending to show upon what claim or claims either of said judgments are based. Then, as part of said return, are set out the judgments of the Court of Claims and the receipts of the attorney for the payment thereof, which said receipts show that both of said judgments were paid before there was any assignment made by the executors of Thomas J. Fisher to Marcus W. Robinson.

To this return the relator filed a demurrer, which alleged that the matters contained in the answer of the defendant, Ellis H. Roberts, were not sufficient in law to bar or preclude the said relator from having or maintaining her aforesaid petition for the writ of mandamus against him. The cause was then heard upon this demurrer, and the court made an order granting the writ of mandamus, which said order is fully set out on pages 14 and 15 of the said record. From this the defendant Roberts, in open court, noted an appeal to the court of appeals.

The court of appeals affirmed the judgment.

ASSIGNMENT OF ERRORS.

1. The court erred in sustaining the demurrer.
2. The court erred in not dismissing the petition of the relator, as the same shows on its face that the relator is not entitled to the relief prayed for.

3. The court erred in holding that the relator was an assignor of the said board of audit certificates mentioned in the petition.

4. The court erred in holding that said certificates were redeemed by the Treasurer of the United States.

5. The court erred in not holding the return a sufficient answer to the matter set up in the petition.

6. The court erred in holding that the case presented by the petition could be corrected by a mandamus.

7. The court erred in holding that mandamus would lie against the present Treasurer.

ARGUMENT.

By an act of Congress, approved June 16, 1880, entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia," conferring jurisdiction on the Court of Claims to hear the same, and for other purposes, chapter 243 (21 Stat., 284), two modes of relief are provided for claimants and, among others, the holders of the certificates which are in dispute in this action. The first section of the statute provided for suits being brought for the holders of these certificates. In the second section of the statute a limitation was enacted that all claims should be barred if not brought within six months. The ninth section provided that the Treasurer of the United States, as ex officio Sinking Fund Commissioner of the District of Columbia, was authorized and directed to redeem the outstanding certificates of the late board of audit created by the act approved June 20, 1874, with the interest accrued on said certificates, by

issuing and delivering to the owners or holders of said certificates bonds of the District of Columbia as provided in section 7 of the act approved June 20, 1874, entitled "An act for the government of the District of Columbia and for other purposes," and acts amendatory thereof, said bonds to bear the same date and same rate of interest, and interest and principal to be payable at the same time and fully to abide the conditions, pledges of faith, and exemptions of the bonds authorized to be issued by the seventh section of said act, to be signed by the said treasurer as ex officio sinking fund commissioner of the District of Columbia, and numbered, countersigned, sealed, and registered as the said seventh section of said act prescribes, attaching all coupons of said bonds up to the date of said certificate.

Under the provisions of the first section of this act this assignor brought suit in the Court of Claims not only for these certificates, but for hundreds of thousands of dollars. That suit was permitted to linger for several years and finally was determined by a compromise, the larger part of the claims against the District having been abandoned. This materially changed the character of the indebtedness of the District so far as these securities are concerned. What the terms of that compromise were, and what inducement there was to make it upon the part of the District, this record does not disclose.

The act of 13th August, 1894, upon which this proceeding is based, provided that "the Treasurer of the United States is hereby directed to pay to the owners, holders, or assignees of all board of audit certificates redeemed by him under the act approved June 16, 1880,

the residue of the 2.35 per cent per annum of unpaid legal rates of interest due upon said certificates from the date of approval of said act providing for their redemption. (28 Stat., 271.) The Treasurer returns that neither he nor any person holding the office of Treasurer of the United States had at any time redeemed the said certificates and that he had no official knowledge nor was there any official record in his office showing or tending to show that the said judgments paid by the Treasurer of the United States were paid on account of the said certificates. These facts are not disputed.

This act of 1894 applies only to such certificates as were redeemed by the Treasurer under the act approved June 16, 1880, and the petition itself shows that these certificates were never redeemed and are not now in the possession of the Treasurer of the United States, and the answer of the respondent denies that they were ever redeemed by him or by any person whatsoever. The statements made in the petition and answer conclusively show that the certificates were never redeemed.

The petitioner claims that "redeemed" means merely payment, and that they were paid, so that such payment is equivalent to redemption; but the act of Congress on the subject of these certificates first provided for redemption and then for payment; and when the judgments set out as part of the respondent's answer were paid, the Treasurer of the United States was prohibited from paying these certificates by the act of Congress of July 25, 1884 (23 Stat., 131); which act states that no payment shall be made of any certificates issued by the late board of audit of the District of Columbia under author-

ity of the act approved June 20, 1874, that shall not be presented for payment within one year from the date of the approval of the act. Both the petition and the answer show that the certificates were not paid by the Treasurer of the United States, and that the only money ever recovered by the assignees of said certificates, the executors of Fisher, was received on the judgments of the Court of Claims, which were fully paid and settled on September 12, 1890.

These certificates were never redeemed or paid, except through the judgment of the Court of Claims; and yet it has been insisted that in considering this petition for the writ of mandamus it should be so determined that the certificates were redeemed, because a mandamus could have been issued against the Treasurer of the United States to compel him to have sooner redeemed the certificates. If this were so, and we insist upon that as settling this whole question, why was not a mandamus applied for under the act of 1880? Why this long delay?

These certificates were never delivered to the persons claiming them until after the passage of the act prohibiting their redemption and payment, but they were held as collateral security for the expense of repairs which the Commissioners of the District of Columbia held were due by the said Evans; and, certainly, no mandamus could have been issued to compel the delivery of the certificates under such circumstances. The fact must not be lost sight of that these certificates were not held as ordinary retains under the contracts which the District of Columbia made for her public works. That

retain was but 10 per cent of the amounts which had been audited. But these certificates were held, as the petition discloses, because the contractor, Evans, was under obligation to make repairs upon the pavements which he had laid.

We insist that it was error to decide that this was a ministerial act upon the part of the Treasurer of the United States. This respondent traveled in the footsteps of his predecessors. They had put a construction upon this statute. It is settled law that a succeeding officer shall not review the action of his predecessor.

And, again, the elaborate discussion upon the part of both of the courts below shows that the questions of construction are not without difficulty. The Treasurer had to decide that to "redeem," as used in the act, meant more than an actual redemption; and he had to determine in this case that the payment of the judgments in the Court of Claims, although there is nothing on their face to show that they are as payment of the certificates, was a payment and redemption of the certificates within the meaning of the act, and that he, as Treasurer, has no discretion in deciding the above questions, but he must decide them all in favor of the relator; that he would be compelled to decide that the payment of the judgments was a payment and redemption of the certificates, when he, by the act of July 25, 1884, was prohibited from paying any such certificates.

The relator asks that all of these questions in this case be decided in her favor; and maintains that she has a standing in court by writ of mandamus, because she has presented such a case as calls on the Treasurer of the

United States merely to do a ministerial act; and if he refuses to do this act the relator says that the court, by its writ, may compel him to perform it.

The respondent contends that the case as presented in the petition is not one that comes within the definition of a ministerial act, and that, therefore, a writ of mandamus will not lie.

This court has so clearly passed upon what is a ministerial duty that it is only necessary to allude to some of its decisions. In the case of *Dunlap v. Black* (128 U. S., 40), the petition for a writ of mandamus to direct the Commissioner of Pensions (Black) to increase a pension was refused by the supreme court of the District of Columbia and the relator appealed to the Supreme Court of the United States. That court, in discussing previous cases, said:

The principle of law deducible from these two cases is not difficult to announce. The court will not interfere by mandamus with the executive officers of the Government in their exercise of their ordinary official duties, even where those duties require an interpretation of law, the court having no appellate power for that purpose. But when they refuse to act in a case at all, or when by special statute or otherwise a mere ministerial duty is imposed upon them, that is a service which they are bound to perform without further question; then if they refuse a mandamus may issue to compel them.

Judged by this rule the present case presents no difficulty. The Commissioner of Pensions did not refuse to act or decide. He did act and decide. He adopted an interpretation of the law adverse to the relator, and his decision was confirmed by the Secretary of the Interior as evidenced by his signa-

ture to the certificate. Whether, if the law were properly before us for consideration we would be of the same opinion or a different opinion, is of no consequence in the decision of this case. We have no appellate power over the Commissioner and no right to review his decision. That decision, and his action taken thereon, were made and done in the exercise of his official functions. They were by no means merely ministerial acts.

The position upon the part of this petitioner is that this redemption act is so certain that it needs no construction. If you applied the act merely to those certificates that have been redeemed and are in possession of the Treasurer of the United States, and hold the person who was the owner, holder, or assignee at the time of the redemption as the only person entitled to receive payment, that might be so; but the relator in this case, by her own petition, makes the act indefinite. It is clearly absolutely certain that these treasurers, several of whom were called upon to act in this very case, were clothed with the necessity of interpreting this statute. The Treasurer of the United States was required to determine whether the certificates mentioned were redeemed, whether they were entitled to redemption, whether they had ever been paid, whether payment amounted to redemption, and what effect the judgment of the Court of Claims had upon their right to redemption. And yet it is insisted that all this was in the discharge of a mere ministerial duty.

ROBERT A. HOWARD,
United States Special Attorney.

JOHN K. RICHARDS,
Solicitor-General.